

REMARKS/ARGUMENTS

After entrance of the above claim additions and cancellations newly added claims 41-47 are pending in this application, claims 1-40 have been cancelled for business considerations. Applicants reserve the right to pursue cancelled subject matter in a later application and cancellation of claims should not be considered an abandonment of the associated subject matter. Basis for these amendments may be found generally throughout the specification and claims as originally filed and specifically in paragraphs [0068] and [0069]. In light of the previous election of subject matter based on Examiners restriction requirement the newly added claims are believed to be to elected subject matter of the present invention. Furthermore, no new matter has been added.

Rejections under 35 U.S.C. §112, first paragraph

Claims 21-29 and 40 were rejected under 35 U.S.C. §112, first paragraph as allegedly containing new matter and failing to comply with the written description requirement. Applicants respectfully traverse the rejection. However, for business considerations and without acquiescing to the Examiner's rejection claims 21-29 and 40 have been cancelled rendering the rejection moot.

Rejections under 35 U.S.C. §112, second paragraph

Claims 30-39 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner reasoned that claims 30-39 were not dependent from claim 21 or any other claim listing specific concentrations of impurities and therefore, a limitation "of the various detection methods, did not provide guidance of what the concentration of the impurity is. And therefore it was allegedly not clear what the metes and bounds of the claims were. Applicants respectfully traverse the rejection. However, for business

considerations and without acquiescing to the Examiner's rejection claims 30-39 have been cancelled rendering the rejection moot.

It should be noted that new claims 41 -47 claim a DNA product comprising an amount of host cell derived impurities that is undetectable under normal assay conditions for the various detection methods found in claim 30 and also comprises specific concentrations of impurities.

Rejections Under 35 U.S.C. §102

Claims 30-39 were rejected under 35 U.S.C. §102(b), as allegedly being anticipated by Marquet et al. (WO 95/21250). Applicants respectfully traverse the rejection. However, for business considerations and without acquiescing to the Examiner's rejection claims 30-39 have been cancelled rendering the rejection moot.

Rejections Under 35 U.S.C. §103

Claims 21-29 and 40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nochumson et al., (US Pub. No. 2001/0034435), Kvederas et al., (US Pub. No. 2003/0109696), Cooke et al., (J. Biotechnol., Vol.85, pp. 297-304, February 2001), Lee et al., (WO 96/02658) and Lander et al., (WO 01/46215). Applicants respectfully traverse the rejection. However, for business considerations and without acquiescing to the Examiner's rejection claims 21-29 and 40 have been cancelled rendering the rejection moot.

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Budahazi et al.
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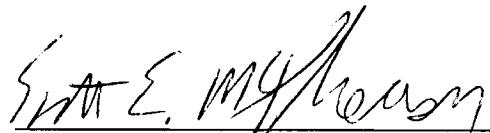
PATENT
Attorney Docket No.: VICAL1500-1

CONCLUSION

In view of the foregoing, Applicants believe all claims elected in this Application are in condition for Allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact Applicants undersigned representative if there are any questions relating to this submission.

The Commissioner is hereby authorized to charge \$1,110 as payment for the Petition for a Three-Month Extension of Time. Additionally, the Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayments to Deposit Account No. 07-1896 referencing the above-identified attorney docket number.

Respectfully submitted,



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